

Message Text

CONFIDENTIAL

PAGE 01 STATE 167926
ORIGIN EUR-03

INFO OCT-01 ISO-00 ONY-00 /004 R

DRAFTED BY EUR/SOV:WTSHINN, JR.:EJQ/PJP
APPROVED BY EUR/SOV:WTSHINN
DESIRED DISTRIBUTION
NO DISTRIBUTION OUTSIDE EUR/SOV - 3 COPIES ONLY
-----001323 011654Z /12

P 011638Z JUL 78
FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW PRIORITY

C O N F I D E N T I A L STATE 167926

FOR MATLOCK FROM SHINN

E.O. 11652: GDS

TAGS: OGEN

SUBJECT: OFFICIAL-INFORMAL

1. FOLLOWING IS THE TEXT OF A MEMORANDUM BY A DEPARTMENT OF
STATE LAWYER ABOUT THE YESSENIN-VOLPIN V. NOVOSTI LAWSUIT.
YOU MIGHT WISH TO PASS IT TO LEON LIPSON INFORMALLY FOR HIS
BACKGROUND INFORMATION.

BEGIN TEXT. YOU HAVE ASKED ME FOR MY ANALYSIS OF THE LAW
SUIT AGAINST TASS AND NOVOSTI AND ITS RELATIONSHIP TO THE
PRESS SITUATION IN MOSCOW. THE CASES ARE STRIKINGLY SIMILAR
IN THEIR FACTS, BUT IN NEW YORK, THE CASE WAS DISMISSED BE-
CAUSE TASS AND NOVOSTI WERE FOUND TO BE IMMUNE UNDER OUR LAW
BECAUSE THEY ARE AGENCIES OF THE SOVIET GOVERNMENT.

IN THAT CASE, YESSENIN-VOLPIN V. NOVOSTI AND TASS (DECIDED
IN JANUARY OF 1978), VOLPIN CLAIMED THAT HE HAD BEEN LIBELED
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 167926

BY STATEMENTS PUBLISHED IN RUSSIA AND GERMANY THAT HE WAS
UNDER PSYCHIATRIC CARE IN THE UNITED STATES. VOLPIN WAS A
SOVIET MATHEMATICIAN WHO EMIGRATED TO THE UNITED STATES IN
1970. WHILE IN THE USSR, HE HAD BEEN A DISSIDENT AND WAS
CONFINED TO PSYCHIATRIC INSTITUTIONS BY THE SOVIETS. WHILE
IN THE WEST, HE WAS NOT UNDER ANY PSYCHIATRIC CARE.

THE DECISION CONCLUDED THAT TASS AND NOVOSTI WERE ENTITLED TO IMMUNITY UNDER THE U.S. SOVEREIGN IMMUNITY ACT. ADDITIONALLY, THE COURT NOTED THAT LIBEL WAS A TORT FOR WHICH SPECIFIC EXEMPTION WAS RECOGNIZED, I. E. FOREIGN GOVERNMENT COMMERCIAL ENTITIES WERE IMMUNE FROM LIBEL SUITS IN THE UNITED STATES.

A REVIEW OF OUR FILES REVEALS THAT THE SOVIETS TRIED VERY HARD TO GET THE STATE DEPARTMENT TO INTERVENE WITH THE COURT TO ARGUE THAT TASS AND NOVOSTI WERE IMMUNE. WE RESPONDED BY POINTING OUT THAT UNDER THE NEWLY ENACTED SOVEREIGN IMMUNITY LAW, THE DECISION WAS UP TO THE COURT AND THAT WE DID NOT INTERVENE. UNDER THE OLD LAW, A DETERMINATION OF SOVEREIGN IMMUNITY WAS MADE BY THE DEPARTMENT OF STATE AND THEN CONVEYED TO THE COURT AND THE SOVIETS WERE APPARENTLY NOT FAMILIAR WITH THE NEW PROCEDURE.

IT IS INTERESTING THAT THE SOVIETS ARGUED THAT IF THEY WERE SUBJECT TO THE JURISDICTION OF THE COURT, THERE WAS NO LIBEL BECAUSE THE STATEMENTS WERE MADE IN RUSSIA AND GERMANY AND NOT WIDELY AVAILABLE IN THE UNITED STATES.

THIS CASE HAS NO PRECEDENTIAL VALUE IN SOVIET COURTS. HOWEVER, THERE IS A BASIC UNFAIRNESS IN THE SITUATION WHICH PERMITS THEIR REPORTERS TO BE IMMUNE FROM OUR COURTS SIMPLY BECAUSE THEY ARE STATE ORGANS. WE CAN POINT OUT THAT THE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 167926

FACTS IN THE VOLPIN CASE ARE VERY SIMILAR, E. G. A CITIZEN CLAIMING THAT HE HAS BEEN LIBELED BY STATEMENTS PUBLISHED IN ANOTHER COUNTRY, BUT THAT TASS AND NOVOSTI ARE IMMUNE FROM OUR JURISDICTION, PARTICULARLY FOR LIBEL. WHITNEY AND PIPER SHOULD NOT, AS A MATTER OF BASIC FAIRNESS, BE SUBJECT TO A DIFFERENT STANDARD SIMPLY BECAUSE THEY ARE PRIVATE CITIZENS. END TEXT.

2. WE ARE POUCHING YOU A COPY OF THE DECISION. VANCE

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 01 jul 1978
Decaption Date: 20 Mar 2014
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE167926
Document Source: CORE
Document Unique ID: 00
Drafter: WTSHINN, JR.:EJQ/PJP
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780272-0735
Format: TEL
From: STATE
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197807102/aaaadicy.tel
Line Count: 103
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: a5784a6b-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: ONLY
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: ONLY
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1852812
Secure: OPEN
Status: NATIVE
Subject: OFFICIAL-INFORMAL
TAGS: OGEN
To: MOSCOW
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/a5784a6b-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014